

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of:)
)
Notice of Proposed Rulemaking)
Retention by Broadcasters of) MB Docket No. 04-232
Program Recordings)
Released: July 7, 2004)

Comments

Keymarket Licenses, LLC, Forever Broadcasting, LLC, Forever Communications, Inc., Forever of Johnstown, Inc., Megahertz Licenses, LLC and Forever of Pa, LLC (collectively “Forever”)¹ hereby submit their “Comments” concerning the above-referenced “Notice for Proposed Rulemaking” (“NPRM”) proposed by the Federal Communications Commission (“Commission”) which was adopted on June 21, 2004 and released on July 7, 2004. In opposition to the NPRM, the following is respectfully shown:

Introduction

1. The Commission in its effort to enhance its enforcement capabilities concerning obscene, indecent, or profane programming has released the NPRM seeking comments on its proposal to require broadcasters to retain recordings for 60 to 90 days of their respective broadcasts for the hours of 6:00 a.m. to 10:00 p.m. Forever hereby opposes the NPRM for several reasons. These reasons can be summarily stated as, first,

¹ The respective licensee are commonly owned and collectively are the licensees of over fifty (50) AM and FM stations. The stations licensed to each licensee are attached as Exhibit 1.

economically prohibitive since the cost of implementation will place an undue burden on the broadcaster, second, unnecessary regulation to those broadcasters that abide by the Commission's Rules and have committed no offense, third, invasion into programming thereby diluting diversity, fourth, an open door to special interest groups demanding the broadcast recordings so their agenda could be leveraged against the broadcaster, and fifth, Commission enforcement based on recordings provided by the broadcaster. In the following paragraphs, Forever will respectfully state their concerns.

Cost of Recording

2. The NPRM proposal of recording broadcasts will require the purchase of recording machines costing on the average of \$1,500 per radio station, exclusive of employee time for which implementation and maintenance are necessary. The total expenditure for the Forever group of stations is in excess of \$75,000. For the entire radio station industry of some 12,000 stations the cost would be an 18 million dollar burden. The Commission should not require these types of expenditures to those law abiding broadcasters who have not committed an offense.

Unnecessary Regulation

3. Forever should not be victimized by the inability of other broadcasters who do not maintain their level of broadcast standards concerning indecency. Forever has an excellent record concerning this topic and shall continue to maintain its high level of integrity concerning its programming. This undue burden to a broadcaster with an excellent track record is unfair and in fact overkill caused by the irresponsibility of a few offending broadcasters. It is Forever's position that if the Commission requires recording of broadcasts, that only the stations that have offended, been fined, and have

unsuccessfully lost all appeals be required to record their broadcasts for a period of one year. The Commission should not “over regulate”, thereby punish or place undue burdens on all broadcasters for the inappropriate behavior of a few.

Invasion Into Programming

4. Forever believes that this is an invasion into programming. The Commission has not successfully provided finite guidelines for indecency, profanity, or obscene programming. Therefore, in retrospect, the broadcast recording will be a tool for liberal interpretation of programming material out of context. Special interest groups, individuals with sensitivity, or new yet unformed government oversight agencies with their respective agenda will attack broadcasters demanding the broadcast recordings. This leaves the door wide open for undue future litigation over a very broad, undefined area, thereby intimidating today’s broadcaster into limiting their programming to that which will be politically correct for the moment. However, what may be politically correct today is not necessarily correct for tomorrow which is further obscured by regional mores and politically correct platforms. Thus the conundrum, the paradox of the broadcaster in deciding which programming to broadcast in order to minimize its future exposure, thereby, albeit indirectly, the recording is an invasion into programming. It forces the broadcaster to limit its programming to the nebulous and ever changing concepts of “safe areas” and “safe material”. Thusly directly limiting first amendment rights for the public in talk programming formats and indirectly limiting first amendment rights in other formats.

Broadcast Programming Enforcement

5. Forever also believes that the Commission could simply start requiring stations to “file” the broadcast recordings for arbitrary use by the Commission in a “raid” on programming. If the Commission feels that any specific broadcaster or station is in violation of the Commission’s Rules, it should target, monitor, and “stake out” the alleged station and provide its own means of recording the broadcast. In the everyday realm of life a traffic enforcement officer does not require the motor vehicle operator to provide video recordings or logs of its driving and parking habits so it can view the data at its discretion for possible violations and then subsequently fine the operator. The Commission could simply extend its list of fines by scrolling through hours of programming provided by the broadcaster and “ticking” off the alleged violations, once again causing more litigation for each broadcaster to defend itself. The onus should be on the Commission to prove the violation by the broadcaster.

Conclusion

6. Forever aggressively opposes the NPRM because it causes an undue burden on all non-offending broadcasters in regards to the Commission’s Rules concerning indecency, obscenity, and profanity. Only the offending broadcasters of the Commission’s Rules should be required to prove their lawfulness through a distinct and separate process, not those of us who abide by the Rules on a daily basis. Forever also feels that adoption of the NPRM will usher in a mountain of special interest groups, sensitive individuals, and future governmental agencies to become the “programming police,” thus hindering, skewing, or even eliminating programming diversity. Further, it should be the Commission’s responsibility to prove that the broadcaster is in violation

through investigative procedure and not by unduly burdening the innocent broadcasters with expensive equipment purchases, maintenance, and labor costs.

Respectfully submitted,

July 21, 2004

Date

Lynn A. Deppen

Lynn A. Deppen, Member, Vice President

EXHIBIT 1

BROADCAST LICENSES

as of 6/30/04

Call Sign	Location	Facility Identifier
Forever of PA, LLC		
WFBG(AM)	Altoona, PA	38269
WFGY(FM)	Altoona, PA	38265
WLTS(FM)	State College, PA	38271
WRKY-FM	Hollidaysburg, PA	72316
Forever Broadcasting, LLC		
WWGY(FM)	Grove City, PA	74469
WSPO(AM)	Johnstown, PA	15327
WMTZ(FM)	Johnstown, PA	15328
WALY(FM)	Bellwood, PA	58312
WPRR(FM)	Altoona, PA	47090
WVAM(AM)	Altoona, PA	47089
WMAJ(AM)	State College, PA	48923
WBHV(FM)	State College, PA	48926
WOWY(FM)	Pleasant Gap, PA	30445
WMGW(AM)	Meadville, PA	24942
WGYI(FM)	Meadville, PA	24940
WHUZ(FM)	Saegertown, PA	12918
WFRA(AM)	Franklin, PA	49777
WOXX(FM)	Franklin, PA	49789
WOYL(AM)	Oil City, PA	21420
WGYI(FM)	Oil City, PA	21421
WTIV(AM)	Titusville, PA	74089
WXXO(FM)	Cambridge Springs, PA	76254
WUUZ(FM)	Cooperstown, PA	88380
WBZY (AM)	New Castle, PA	24997
WKST (AM)	New Castle, PA	71246
Forever of Johnstown, Inc.		
WUZI(FM)	Portage, PA	25733
WUZI-FM1	Johnstown, PA	121825
WNTJ(AM)	Johnstown, PA	72964
WKYE(FM)	Johnstown, PA	72965
WNTW(AM)	Somerset, PA	56364
WUZY(FM)	Somerset, PA	56363
Megahertz Licenses, LLC		
WWLY(FM)	Huntingdon, PA	28132
WHUN(AM)	Huntingdon, PA	28131
WXMJ(FM)	Mount Union, PA	3956
Forever Communications, Inc.		

WBVR-FM	Auburn, KY	71244
WRKY(AM)	Murray, KY	73270
WFGE(FM)	Murray, KY	73269
WNBS(AM)	Murray, KY	29695
WBGN(AM)	Bowling Green, KY	27243
WUHU(FM)	Smiths Grove, KY	27242
WLYE-FM	Glasgow, KY	57897
Keymarket Licenses, LLC		
WASP(AM)	Brownsville, PA	65708
WOGG(FM)	Oliver, PA	65709
WFGI(AM)	Charleroi, PA	21215
WOGI-FM	Duquesne, PA	21214
WOMP(AM)	Bellaire, OH	3038
WOMP-FM	Bellaire, OH	3039
WSTV(AM)	Steubenville, OH	65407
WOGH(FM)	Burgettstown, PA	65408
WOHI(AM)	East Liverpool, OH	13710
WOGF(FM)	East Liverpool, OH	13711
WPNT(AM)	Connellsville, PA	39859
WUKL (FM)	Bethlehem, WV	4996
WJST (FM)	Ellwood City, PA	24999
WPKL(FM)	Uniontown, PA	33828